

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**



AGENDA - GROUP A

**San Cristóbal Ballroom, Caribe Hilton Hotel
San Juan, Puerto Rico
August 13, 2009**

8:00 - 9:00 a.m. REGISTRATION

CRIMINAL EVIDENCE: “Selected Challenges to Prosecution Evidence”

Michael H. Graham
University of Miami School of Law

9:00 - 10:00 a.m. Introduction
Hypothetical Questions

- I. Rule 404(b): Other Crimes, Wrongs, or Acts; A New Paradigm
 - A. Overview
 - B. Proposed Revised Fed.R.Evid. 404 (b)-(h)
 - C. Illustrative Current Fed.R.Evid. 404(b)
Application in Drug Cases

10:00 - 10:45 a.m. II. Confrontation Clause

- A. *Crawford/Davis*
- B. Application Summary: §802:2.2 Handbook of Federal Evidence (6th Edition, Thomson/West, 2009 Pocket Part)
- C. Rule 703
- D. *Melendez-Diaz v. Massachusetts*
- E. Forfeiture
 - 1. Rule 804(b)(6)
 - 2. *Giles v. California*

10:45 - 11:00 a.m. BREAK

- 11:00 - 11:45 a.m.** III. Law Enforcement Expert Witnesses; Explaining Complex Subject; Abuses
- A. Fed.R.Evid. 701-706
 - B. Drug Sale; Simple Case
 - C. Rule 703; “Reasonably Relied Upon”
 - D. Drug Sale Improper Reliance By Law Enforcement Official
On Not Reasonably Relied Upon Evidence
- 11:45 - 12:15 a.m.** IV. Abuse of Discretion, Reversible Harmless, Plain and Structural Error
- A. Rule 103
 - B. Criminal Law Bulletin Article
- (If time permits)
- V. Hearsay Definition; Fed.R.Evid. 801(a)-(d).
- 12:15 - 1:15 p.m.** **LUNCH**

ELECTRONIC DISCOVERY IN CIVIL LITIGATION

Kenneth J. Withers
Director, Judicial Education and Content
The Sedona Conference®

- 1:15 - 1:25 p.m.** Introduction and overview
- 1:25 - 1:35 p.m.** Why is “digital” different?
- 1:35 - 1:45 p.m.** How computers work (for those of us who aren’t technical)
- 1:45 - 1:55 p.m.** Recurring discovery issues involving ESI
- 1:55 - 2:05 p.m.** The fundamental case law: *Zubulake* and its progeny
- 2:05 - 2:15 p.m.** The 2006 Amendments to the Federal Rules of Civil Procedure
- 2:15 - 2:25 p.m.** Rule 26(f) and the “meet and confer” requirement
- 2:25 - 2:35 p.m.** Data preservation – the issues and the case law
- 2:35 - 2:45 p.m.** Scope of discovery and the proportionality rule
- 2:45 - 3:00 p.m.** **BREAK**

3:00 - 3:10 p.m.	“Not reasonably accessible” ESI and two-tiered discovery
3:10 - 3:20 p.m.	Forms of production –the issues and the case law
3:20 - 3:30 p.m.	Privilege claims and privilege waiver: Fed. R. Evid. 502
3:30 - 3:40 p.m.	Expert disclosure and discovery: proposed Fed. R. Civ. P. 26(a)(2) and 26(b)(4)
3:40 - 3:50 p.m.	Spoliation and sanctions: Rule 37(e) and the court’s inherent authority
3:50 - 4:20 p.m.	Ethics issue I: Duty of competent representation
	Ethics issue II: Protection of client confidences
	Ethics issue III: Duty of candor to the court
	Ethics issue IV: Conflicts between attorney and client
4:20 - 4:30 p.m.	Questions and discussion

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August 14, 2009**

8:00 - 9:00 a.m. REGISTRATION

OVERVIEW OF FOURTH AMENDMENT LAW

**Orin Kerr
George Washington University Law School**

9:00 - 9:15 a.m. Overview of Fourth Amendment Law

9:15 - 10:00 a.m. Searches and Seizures: The “Reasonable Expectation of Privacy” test and the meaning of Fourth Amendment “Seizures”

10:00 - 10:30 a.m. Exceptions to the Warrant Requirement

10:30 - 11:00 a.m. The “Stop and Frisk” Power under *Terry v. Ohio*

11:00 - 11:15 a.m. BREAK

11:15 - 11:45 a.m. Search Warrants and Searches Executed Pursuant to Warrants

11:45 - 12:00 a.m. Computer Search and Seizure and Applying the Fourth Amendment to the Internet

12:00 - 12:45 a.m. The Scope of the Exclusionary Rule

12:45 - 1:45 p.m. LUNCH

U.S. SUPREME COURT 2008-2009 TERM REVIEW:
DEVELOPMENTS IN CONSTITUTIONAL AND CRIMINAL LAW

Jordan M. Steiker

University of Texas at Austin School of Law

- 1:45 - 2:00 p.m.** I. Overview of the Term
- A. Trends in the Court's Docket
 - B. Divisions in Decisions: Fault Lines in the Current Court
- 2:00 - 3:00 p.m.** II. Criminal Law Developments
- A. Due Process: Right of Access to DNA to Establish Actual Innocence (*Osborne*)
 - B. Fourth Amendment
 - 1. Scope of *Belton* Authorization to Search Vehicle Incident to Arrest (*Gant*)
 - 2. Application of Exclusionary Rule Where "Isolated Police Negligence" Led to Otherwise Unauthorized Search (*Herring*)
 - C. Federal Habeas
 - 1. Deference to Resolutions in State Court (*Knowles, Hedgpeth, Waddington*)
 - 2. Federal Funding for Clemency (*Harbison*)
 - 3. Enforceability of State Procedural Defaults (*Cone*)
 - D. Confrontation Right and Scope of *Crawford* With Respect to State Forensic Testimony (*Melendez-Diaz*)
- 3:00 - 3:15 p.m.** **BREAK**
- 3:15 - 3:45 p.m.** E. Peremptory Challenges: Consequences of Erroneous Denial of Defendant's Peremptory Strike (*Rivera*)
- F. Eighth Amendment Prohibition of Executing Persons with Mental Retardation: Applicability of Double Jeopardy in Light of Prior Designation of Mental Retardation (*Bobby*)
- 3:45 - 5:00 p.m.** III. Constitutional Law Developments
- A. Scope of Federal Power: Continuing Viability of Voting Rights Act (*NAMUNDO*)
 - B. Preemption of State Law: Do FDA Labeling Requirements Displace State Law Products Liability Claim? (*Wyeth*)
 - C. Equal Protection and Title VII: Does Fear of Title VII Liability Justify Race Conscious Employment Decision? (*Ricci*)
 - D. Fourth Amendment in the Schools (*Safford*)
 - E. Due Process and Judicial Bias (*Caperton*)